

network it does not own or maintain.⁴⁸ For what does ACSI need such support? Universal service support should be paid to assist with the cost of establishing and maintaining facilities in high cost areas. The Arkansas Act provides such support.

ACSI claims the state commissions are forbidden from requiring separate public interest determinations in non-rural areas.⁴⁹ However, the wording of the Federal Act differs with ACSI's position. The Federal Act in § 214 (e)(2) provides:

Upon request and consistent with the public interest, convenience, and necessity, the State Commission may in the case of an area served by a rural telephone company, and shall, in the case of all other areas . . . ”⁵⁰

The language establishes the state PSC's must have a request and act consistent with the public interest, convenience, and necessity. The underlined language above applies to the entire sentence not just to rural areas. A state PSC would not designate a CLEC as an ETC without a “request” from the carrier in any area, whether rural or non-rural. The public interest clause also applies to both rural and non-rural areas by the clear wording of § 214(e)(2).

ACSI acknowledges that CLECs will have the FUSF as a source of support in Arkansas.⁵¹

ACSI admits the Arkansas Act does not block CLECs from obtaining FUSF support. ACSI argues an ILEC has a de jure advantage through the AUSF support.⁵² However, an ILEC also must support the cost of high cost facilities that a CLEC is not required to support. ACSI has not

⁴⁸ See Petition for Declaratory Ruling, p. 18.

⁴⁹ Id.

⁵⁰ See Federal Act § 214(e)(2).

⁵¹ See Petition for Declaratory Ruling, p. 19.

⁵² Id.

demonstrated the amount of the support an ILEC would receive from the AUSF outweighs any extra cost associated with owning and maintaining the high cost facilities. A CLEC may become an ETC and get support anyway. ACSI fails to show how the Arkansas Act's universal service provisions have the effect to prohibit a CLEC from providing any interstate or intrastate telecommunications service. ACSI has failed to show that the universal service provisions have the effect of prohibiting ACSI from providing a telecommunications service as required for preemption under § 253 of the Federal Act.⁵³

The Commission has not issued final rules on the FUSF. The Arkansas PSC has not issued its rules on universal service funding. ACSI seeks preemption of the Arkansas Act's universal service provisions in a vacuum. Its request is premature and not justified by the Petition.

⁵³ See Federal Act § 253.

CONCLUSION

Congress, by passing the Federal Act, established a national policy to promote competition in the local exchange markets within the United States. Congress did not immediately open all United States markets to competition. Congress recognized rural areas face unique circumstances. Congress reasoned the policy of competition may not be equally beneficial in each local exchange market. Arkansas followed Congress in applying a cautious approach to competition for its rural population. Rather than directing the Arkansas PSC to take all action it could reasonably take to promote competition at all levels, the Arkansas General Assembly directed the Arkansas PSC to take only action required by the Federal Act.

Eventually, competition will exist in all local exchange markets. Congress, in time, may end the special protections provided to rural areas in the Federal Act. Mistakes will be made along the way as the United States establishes full competition in each local exchange market. Congress had the right to use caution as it considered implementing competition. Arkansas has the right to use caution when implementing competition within the state. Arkansas is required to do no less than what the Federal Act requires. On the other hand, it cannot be required to do more than what the Federal Act requires.

ACSI fears competition will not develop in Arkansas as it should due to the Arkansas Act. The question is not how competition should develop in Arkansas, but what competition the Federal Act requires. It is not enough for ACSI to argue competition in Arkansas will grow more slowly than ACSI desires. The sole issue is whether the Arkansas Act prevents the competition the Federal Act requires.

The conservative approach in Arkansas complies with the Federal Act. The text of the Arkansas Act establishes the Arkansas PSC is duly empowered to do what is required to comply with the Federal Act. The Arkansas PSC has not shown any lack of diligence or determination to take all action required by the Federal Act.

The Arkansas Act is an appropriate and meaningful response to competition in the local exchange markets in Arkansas. The Arkansas response complies with the requirements of the Federal Act. The Commission should deny the petition and allow the Arkansas PSC to implement the Federal Act as the Arkansas Act allows.

Respectfully submitted,

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Century Telephone of Arkansas
Century Telephone of Mountain Home
Century Telephone of Redfield
Century Telephone of South Arkansas
Cleveland County Telephone Co.
Decatur Telephone Co.
GTE Southwest, Inc.
GTE Arkansas, Inc.
Lavaca Telephone Co.
Madison County Telephone Co.
Magazine Telephone Co.
Mountain View Telephone Co.
Northern Arkansas Telephone Co.
Prairie Grove Telephone Co.
Rice Belt Telephone Co.
E. Ritter Telephone Co.
Scott County Telephone Co.
Southwest Arkansas Telephone Cooperative
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CERTIFICATE OF SERVICE

I, George Hopkins, do hereby certify that a true and correct copy of the above and foregoing Comments was served, by Federal Express, on this 2nd day of the May, 1997, to the following:

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